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ABSTRACT

The purpose of this publication is to provide information about the U.S. Office of Education (USOE) Copyright Program. It is the July 1971 revision of the "Copyright Program Information" April 1971 edition (ED 051 855). It is a supplement to the "Copyright Guidelines" published in the Federal Register on May 9, 1970 (ED 051 854) and effective June 8, 1970. The information is provided primarily for those institutions and organizations which are developing educational materials under USOE contracts and project grants and which desire to obtain commercial dissemination, under copyright, for those materials. (Author/MM)

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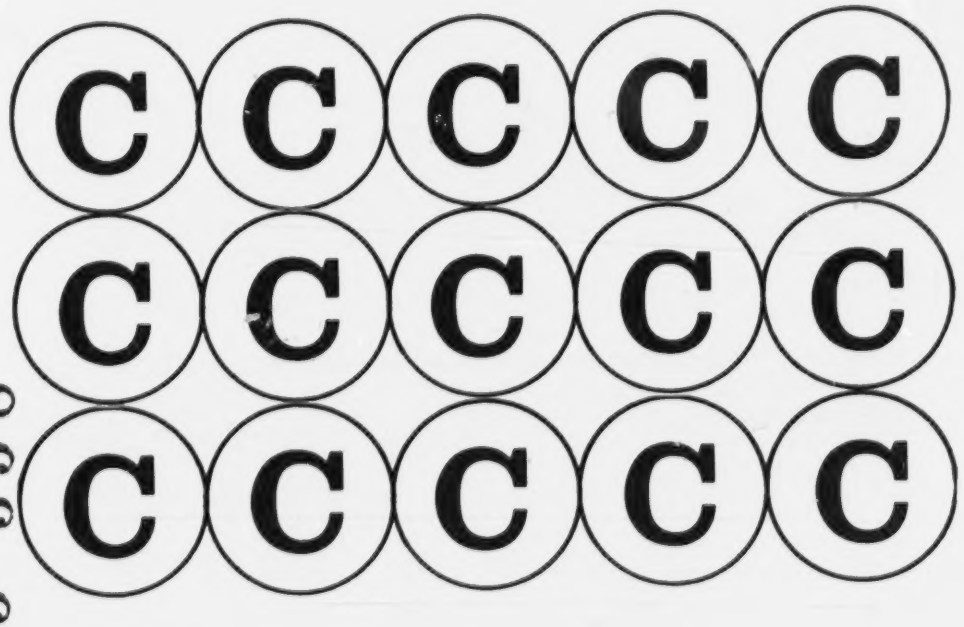
COPYRIGHT PROGRAM INFORMATION



LI 003 358

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Office of Education/National Center for Educational Communication

The purpose of this publication is to provide information about the U.S. Office of Education (USOE) Copyright Program. It is a supplement to the Copyright Guidelines published in the Federal Register on May 9, 1970 (35 F.R. 7317) and effective June 8, 1970. The information is provided primarily for those institutions and organizations which are developing educational materials under USOE *contracts* and *project grants* and which desire to obtain commercial dissemination, under copyright, for those materials. However, it should be of use to anyone concerned with the USOE Copyright Program. (All section numbers shown in parentheses refer to the Guidelines sections most pertinent to the matter being discussed.)

For a copy of the Guidelines, or additional information concerning the Copyright Program, write to:

The Copyright Administrator*
National Center for
Educational Communication
U.S. Office of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

*Referred to as the Copyright Program Officer in the Guidelines

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Elliot L. Richardson, *Secretary*
Office of Education
S. P. Marland, Jr., *Commissioner of Education*

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The USOE Copyright Program has two primary purposes:

1. to help maintain the integrity of materials in the process of development, testing, and evaluation, prior to dissemination, and
2. to facilitate the commercial dissemination of materials after they are developed. (Dissemination as used herein encompasses all publication and distribution functions, including printing, editing, film production, stocking, mailing, distributing, etc.)

The materials in question include, but are not limited to, curriculum materials (books, slides, tape, film, apparatus), research reports, monographs, journal articles, and computer programs.

Development of Office of Education Copyright Policy: The current Statement of Copyright Policy* (which is incorporated into the current Copyright Guidelines) supersedes the Copyright Policy statement which was published in the Federal Register on March 1, 1968. The current Guidelines supersede the Guidelines which were issued on June 24, 1968.

The chief differences between the previous policy and the new policy, as reflected in the Guidelines, are:

1. *Emphasis on public domain discarded.* Under the previous Guidelines the contractor or grantee which developed materials (educational or other), if it desired to have the materials disseminated commercially, first had to try to obtain such dissemination without copyright. Only if that attempt failed could it seek authorization to obtain such dissemination under copyright. That precondition does not now exist.
2. *Copyright royalties shared with developers.* Any contractor or grantee (sometimes referred to as the developer) which is a nonprofit organization may retain a share, normally 50 percent, of copyright royalties formerly payable to the Government. Under the previous Guidelines a contractor or grantee was prohibited from retaining a share of the royalties.
3. *USOE authorized to arrange dissemination under copyright.* In the event the developer is unwilling or unable to arrange for dissemination, either with or without copyright, the USOE may make arrangements directly with a disseminator (sometimes referred to as the publisher or producer or distributor). Previously that authority did not exist. Any copyright authorized to be claimed may then be in the name of the disseminator. The developer will not, in that event, share copyright royalties.
4. *"Thin market" materials require less formal procedure.* In order to expedite the dissemination of materials which are not directed at a mass market, it is no longer necessary that a formal "request for proposals" be issued to a large segment of the dissemination industry. However, a less formal competitive procedure is required. The previous Guidelines did not distinguish between "mass market" and "thin market" materials.
5. *Exclusion from Guidelines procedures authorized for articles pub-*

*Section 14 of the Guidelines, which is reproduced on the inside of the back cover.

lished in professional journals or other periodicals. No specific authority from the USOE is now required for the publication, in copyrighted scholarly and professional journals and in other periodicals, of articles based upon work performed under a USOE supported project. The previous Guidelines did not touch upon this matter.

State Grants: The USOE Copyright Guidelines are applicable only to contracts and direct grants (project grants) which include in their terms and conditions or general provisions the "Copyright and Publication" clause. They are not applicable to "State - administered formula grant programs." That term, as used in the Guidelines, refers to programs in which the appropriations are allotted among the States on the basis of a statutory formula and are administered by the States generally under a State "plan" or "application." (Materials will be considered to have been fully funded under a State-administered *formula grant* program if that was the funding mode at the time publication under copyright was sought, or at the end of the project period. Materials will be considered to have been fully funded under a *project grant* if that was the funding mode at the time publication under copyright was sought, or at the end of the project period.)

Examples of current significant Office of Education State-administered formula grant programs are:

Title I and Title II of the Elementary and Secondary Education Act of 1965 and that portion of Title III of that act which is operated under State plans;

Parts B, F, G, and H of the Vocational Education Act of 1963 and those portions of Parts C and D of that act which are operated under State plans;

Title I and Part B-2 of Title V of the Higher Education Act of 1965;

That part of the Adult Education Act of 1966 that is operated under State plans;

Titles I, III, IV-A, and IV-B of the Library Services and Construction Act; and

Part B of the Education of the Handicapped Act.

With regard to materials developed under such grants and for which copyright is claimed, the U.S. Government requires only an irrevocable, nonexclusive, and royalty-free license to reproduce and publish the material copyrighted, including the right to sublicense for all U.S. Governmental purposes, thus leaving with the grantee all other rights. It is the responsibility of the State or some entity other than the Federal Government to determine the circumstances and procedures under which such materials will be disseminated under copyright. Any royalty received by a State or local educational agency from a publisher of materials developed under a State-administered formula grant program is deemed to constitute

grant-related income and is to be disposed of in the same manner as other grant-related income, i.e., expended for grant purposes or remitted to the Office of Education. (See the next section for more information on grant-related income.)

Grant/Contract Related Income and Investment Income: Copyright royalties must not be confused with other types of income which might be generated through publication of materials developed under a contract or grant. Copyright royalties are monies paid by a publisher to an author for permission to publish the author's work *under copyright*. Other proceeds do not qualify as copyright royalties even though they may be termed royalties. The only proceeds with which the Copyright Guidelines are concerned are true copyright royalties derived from the publication of materials generated under a contract or under a project grant.

Income (other than investment income) derived by the grantee from activities conducted *under the grant* is termed "grant-related income." This includes royalties derived from publication of materials generated under a *State-administered formula grant program*. Such income may be produced also by the services of individuals or by employing equipment, facilities, or general services of the grantee organization. Any such grant-related income earned under a grant is to be used by the grantee to further the purposes of the grant program. If the income cannot be so used, it is to be paid by the grantee to the U.S. Office of Education. However, that portion of royalties authorized to be retained by a contractor or project grantee in accordance with the Copyright Guidelines procedures may be utilized in any manner which the contractor or project grantee chooses.

The disposition of contract-related income (other than royalty income), under a cost type contract, will be treated in the same manner as grant-related income, i.e., if it cannot be utilized for contract purposes, it will be remitted to the Office of Education.

Student Grants: Some contracts and project grants envisage the creation of educational materials as one of the purposes of the activities assisted. Other financial assistance is given merely for the purpose of assisting a student to obtain an education (e.g., a fellowship). In the latter case, any materials written or prepared by the student are deemed to be incidental and are excepted from the requirements of the Guidelines. The student may copyright those materials without any special authorization from the USOE, and the U.S. Government will claim no rights therein other than the normal irrevocable, nonexclusive, royalty-free license for U.S. Government use, when the grant so provides. However, if the student is working on a project the purpose of which is the generation of educational materials, those materials come within the ambit of the Copyright Guidelines even though the student may choose to utilize the product for credit toward a graduate degree also.

Protection for Materials During Development: (Sec. 13)
During the development process it is often necessary to distribute materials as part of the development and testing procedures. Some of these are "unproven" materials. To prevent their premature release the USOE will ordinarily authorize the contractor/grantee to claim copyright for a limited period prior to completion of development. At the end of that period such materials must be available for placement in the public domain unless the developer obtains authorization from the USOE to obtain commercial dissemination of the materials under copyright.
To obtain authorization for claiming copyright during development it is necessary for the developer to send a letter to the Commissioner of Education, addressed to the attention of the Copyright Administrator, requesting such authorization.

That letter should include:

1. The contract/grant number.
2. The award and expiration dates of the contract/grant.
3. The name of the USOE contracting/grants officer.
4. Identification of the materials for which copyright is desired, with a copy if available.
5. The period during which copyright would be claimed (normally to terminate no later than the scheduled contract/grant expiration date).
6. The reason copyright is deemed to be necessary.
7. The name of the project director.
8. The name and address of the USOE project officer.
9. The distribution plans for test and evaluation of experimental materials.
10. Generally, the dissemination plans for materials after development.

(This information, except item 9 and except the parenthetical portion of item 5, should be provided also when requesting authorization to obtain commercial dissemination under copyright of final materials. Additional requirements relating to "mass market" materials and to "thin market" materials are set forth on subsequent pages of this publication.)

Dissemination Channels: (Sec. 3)
Many dissemination channels are available. The developer should select the one which has the greatest likelihood of achieving widest use of his materials. Release of materials in the public domain (without copyright) is one approach. Public domain dissemination requires no specific approval by the USOE, unless the terms of the contract/grant specify otherwise. However, if the developer elects to disseminate without copyright, then it may not disseminate or have disseminated a copyrighted revision within 12 months after the publication date of the uncopyrighted version.

Copyright Protection: The USOE does not grant copyrights and does not register copyright claims. Copyright for a book is secured by publication with the appropriately worded copyright notice applied. After copy-

right is secured in that manner (and not before), it is made a public record by registering it with the U.S. Copyright Office in the Library of Congress. Copyright gives to the proprietor the exclusive legal right to republish, copy, translate, etc., the author's work. The USOE merely authorizes publication under copyright and stipulates the terms and conditions (including that portion of the statutory copyright term) for which such copyright may be claimed.

Commercial Dissemination under Copyright: Dissemination under copyright normally involves three parties: the developer, the disseminator, and USOE. (A fourth party, the author or author team, may also be involved.) The materials are normally published by the disseminator, under arrangements with the developer, and with the approval of the USOE.

Incentives: (Secs. 2 and 10)
In revising its copyright policy the Office of Education has sought to increase the incentives for developers and disseminators in order to achieve widespread use of materials developed with USOE support. The Office of Education recognizes that the disseminator is entitled to make a reasonable profit from the undertaking; the developer (unless it is a profit-making organization) may share in any royalty income; and the educational community should benefit from ready access to attractive, tested educational products at reasonable prices. The U.S. Office of Education will share royalties with any cosponsor. (A cosponsor is any person or organization which has cntributed materially to the development of the materials to be published.) If the cosponsor is the contractor/grantee (developer) it will share royalties under either of two plans: The Government will permit a developer to retain 50 percent of net royalty, without regard to the relative costs incurred by the parties. (Net royalty is defined as that amount remaining after any cosponsor has received its share.) Or, if a developer believes its cost share to have been proportionally greater than the royalty share it would retain under the 50 percent net royalty formula, it may elect to retain a royalty share which corresponds with its cost share. If this option is taken, the developer will have to show that its cost share is as alleged. The U.S. Office of Education may cost share with a cosponsor on a parallel or sequential basis, or a combination of both. For example, in the first circumstance the Office of Education could add support to a project which had begun, but was not completed, under the support of another. In the second circumstance another organization could augment a project which was begun, but not completed, under USOE support. In the third circumstance there might be overlapping support, which would be a combination of parallel and sequential support.

Procedures (General): (Secs. 4 and 6)
The developer is expected to initiate

the action necessary to obtain commercial dissemination. If the copyright approach is going to be taken, approval from the USOE must be obtained. The request for such approval must be accompanied by plans for obtaining competition for dissemination. If the materials to be disseminated constitute "mass market" materials, the developer must follow the procedures set forth in the following section. However, if the materials are considered "thin market" materials, either the "mass market" approach or a less formal approach may be utilized. The latter approach will be acceptable only if the Commissioner agrees that the materials do in fact qualify as "thin market" materials.

Procedures (Mass Market Materials): (Sec. 4)

The request for authorization to obtain commercial dissemination under copyright should be in the form of a letter to the Commissioner of Education, addressed to the attention of the Copyright Administrator, and should include the information itemized in the earlier paragraph headed: "Protection for Materials During Development (Sec. 13)." Also to be included is the documentation specified below:

1. A proposed "Request for Proposals" (RFP) which the contractor/grantee would send to potentially interested members of the publication/distribution/information (dissemination) industry.
2. A list of potential proposers to which the RFP would be sent. (As an alternative approach the contractor/grantee could distribute a notice of availability of the RFP but send copies of the RFP only to those organizations which ask for a copy.)
3. A set of criteria for selecting the successful proposer.

The RFP should identify the materials to be disseminated, state that the materials were developed under a USOE contract or grant, and specify the developer's dissemination goals. It should solicit the disseminator's response to various aspects of development, production, and dissemination, as appropriate, such as:

(a) The capability of the disseminator to do an acceptable job, as outlined in the solicitation.

(b) The research, development, technical, and editorial staff which will be furnished, i.e., for tasks to be performed, budget to be assigned.

(c) The sales and promotional effort to be applied.

(d) The manner in which the materials will fit into the disseminator's portfolio of products.

(e) The priority of resources which will be given these materials.

(f) The proposed format of the finished product.

(g) Plans for personnel training or other special implementation efforts.

(h) Approximate sales or rental prices.

(i) The royalty schedule.

(j) The time schedule for publication and distribution.

In addition, the RFP should indicate that the final dissemination agreement will contain provisions specific to this situation, including the requirements

of the USOE copyright authorization agreement, and the usual dissemination agreement provisions.

The *list of potential proposers* should include all those which likely would have an interest in competing for the opportunity to disseminate.

The *criteria for selection* should be included in the RFP. These are the factors considered vital to the success of the particular dissemination effort. They are to be set down in their order of importance and may be "weighted" if the developer so desires.

Procedures (Thin Market Materials): (Sec. 6)

If the developer believes that the materials it desires to disseminate qualify as "thin market" materials, it may take one of the following approaches: (1) It may proceed in the manner specified for "mass market" materials (see the previous section), or (2) if preferable, instead of providing a proposed formal RFP, the developer may indicate to USOE that it considers the materials to qualify as "thin market," provide a copy of a letter which it proposes to send to interested disseminators (a minimum of three), and identify the disseminators to which the letter would be sent. When approval from the USOE is received, in the form of a Copyright Authorization Agreement, the developer can mail the copies of its proposed letter of solicitation, receive responses, evaluate those responses, make a tentative selection, and send the selection to the USOE for approval of the selection. The next step would be to prepare a dissemination agreement and obtain approval of the terms of that agreement from the USOE prior to executing the agreement.

As an alternative approach to (2), the developer could prepare the letter, send it to appropriate disseminators (a minimum of three), receive and evaluate responses, make a tentative selection, and then obtain approval of the selection from the USOE.

The first method given under approach (2) is preferable and is recommended for use by developers who are attempting the procedure for the first time. In this way, suggestions can be made by the Copyright Administrator concerning the proposed letter of solicitation so that potential problems and difficulties may be avoided. In either case copies of all responses should be furnished to the USOE together with the rationale for making the indicated tentative selection, as a basis for USOE approval.

The alternative approach to (2) is obviously a shortcut method. It has the advantage of avoiding involvement of the USOE in situations before it is determined that there is sufficient interest on the part of the dissemination industry to make an authorization request worthwhile. It has the obvious disadvantage that the approach utilized may not be approved by the USOE, which might result in repeating the procedure, or a portion of the procedure.

The letter to be sent to the disseminators should be tailored to fit the situation. The developer should establish specific dissemination goals and

those should be stated so that potential disseminators will have an adequate basis for response.

Involvement of Disseminators in Development: (Sec. 7)
Educational materials must be developed with the understanding that, to have maximum impact, they must be effectively disseminated after development. Proper planning during development will facilitate a smooth and rapid transition from the development phase to the dissemination phase. With respect to curriculum materials particularly, the dissemination industry can contribute to and help give proper direction to the development effort. Contact between the developers and disseminators during development is encouraged provided no commitment to a disseminator is made to disseminate materials under copyright, unless the Copyright Guidelines competitive procedures are followed. If the developer desires to have a disseminator actively participate in the development effort, with a commitment to the disseminator to disseminate the materials under copyright after development is completed, it may obtain approval from the USOE to proceed toward that objective. In that event the proposed RFP, which would accompany the request for authorization to secure publication under copyright would encompass development functions as well as dissemination functions to which a disseminator would be required to respond, and the USOE authorization would approve the claiming of copyright first during the period of further development and second during a specified dissemination period.

Waiver of Requirement for Competition for Dissemination: (Sec. 12)
Although the concept of competition for dissemination is one which is intended to assure that one disseminator does not obtain an undue advantage over another and is intended also to assure the most beneficial arrangement for the purchasing public, it is recognized that competition is not practical for all situations. Sometimes the market for a particular material is too limited for competition to be economically justified. In other situations only a single disseminator has the capability to do a unique job. In these situations and perhaps in some others the requirement for competition will be waived when a determination is made that such a waiver is in the public interest.

Copyright Authorization Agreement: (Secs. 8 and 9)
Approvals of requests to publish or to secure publication under copyright are made in the form of agreements signed on behalf of the Government by a USOE Contracting Officer, and on behalf of the contractor/grantee by an official of that organization authorized to sign such agreements. The agreement, if for the dissemination of final materials, will approve the dissemination plans either as submitted or as modified to accord with the Copyright Program requirements. The copyright authorization agreement authorizing the claiming of copyright during the period of de-

velopment will normally include, but not necessarily be limited to, the following:

1. A statement to the effect that the USOE merely authorizes the securing of copyright. It does not grant a copyright or take a position on the copyrightability of the materials.
2. An identification of the materials to which the agreement is applicable.
3. The irrevocable, nonexclusive, royalty-free license which is required by the U.S. Government.
4. The time period during which copyright may be claimed.
5. The action which can be taken by the Commissioner in the event of noncompliance with the terms of the authorization agreement.
6. The special legend to appear adjacent to the copyright notice on materials to be published, indicating the period during which copyright is authorized to be claimed.

If the authorization agreement is for the commercial dissemination of final materials, the agreement will include the following also:

1. A date by which dissemination must be accomplished (materials offered for sale to the public), which date may be extended for good cause shown.
2. The authority to issue the RFP or the letter of solicitation, accept proposals, and make a tentative selection.
3. The formula for sharing of potential royalties by the Government and the contractor/grantee.
4. The treatment to be accorded revisions and adaptations.
5. The right of the Government to make audits of the contractor's/grantee's, and of the publisher's, books of accounts relating to sales and royalties for materials published pursuant to the agreement.

Additional USOE Approvals: (Sec. 8)

The USOE must approve *first* the selection of the disseminator and *second* the final dissemination agreement. Ordinarily, this is done in two separate actions. However, the circumstances may in a special situation warrant making both approvals in the same action. If the requirement for competition for dissemination is waived, the selection of the disseminator, and perhaps also the dissemination agreement, may be approved as part of the copyright authorization agreement.

Procedural Flexibility: (Sec. 12)

Although a sequence of steps to accomplish commercial dissemination under the USOE Copyright Program is provided and contractors/grantees are urged to follow that sequence as the best mode in which to accomplish the objectives, it is the objective and not the sequence which is important. The objective is to obtain effective dissemination, in a manner which will serve the public interest, and without giving any one disseminator an undue advantage. In this vein some developers have found it advantageous to hold a briefing for disseminators either before or after the RFP is issued, in the interest of better communication and clarity.

Importance of Timely Dissemination: Whereas the importance of effective dissemination is obvious, it may not be as obvious that timely dissemination may be of equal importance. Accordingly, every authorization is contingent upon dissemination being accomplished within a reasonable specified time. This is based on the principle that materials generated at public expense should be made available to the public at the earliest time feasible. However, certain beneficial trade-offs are recognized. For example, if in a particular case the obtainment of commercial dissemination is deemed preferable to immediate availability through the Educational Resources Information Center (ERIC) system, ERIC availability could be withheld for a reasonable period of time to allow arrangements to be made for commercial dissemination. If the materials are of a type which would ordinarily be made available through ERIC (research reports, for example), the materials may still be made available, through ERIC, after commercial dissemination has been accomplished, but only in a microfiche format.

Real Party in Interest: The normal means for the USOE to obtain the development of educational materials is a contract with or grant to a research and development organization. Although the development is accomplished by individual employees of the organization, both the individuals and the organization officials should realize that it is the organization and not the individuals which bears the ultimate responsibility not only for the developed product but also for the dissemination of the product. The organization, not specific individuals, is the real party in interest. In order to establish a more uniform approach to dissemination of materials those organizations may wish to designate an official and/or an office to coordinate the dissemination effort. It is expected that the aspect of royalty sharing will justify such efforts. *Universities particularly should establish written policies setting forth the respective rights of the university and its staff members in anticipated copyright royalties.*

Contractor/Grantee–Subcontractor Relationships: Insofar as the U.S. Office of Education is concerned, the prime contractor or grantee is the real party in interest. If some of the development work is to be done by another organization under a subcontract or pursuant to a contract under the grant, and the likelihood exists that the subcontractor will expect to receive all or a portion of the contractor's or grantee's share of copyright royalties, an understanding between the prime and the sub should be accomplished at the outset in order to avoid a later misunderstanding. The USOE will respect that understanding if it does not conflict with USOE requirements. In the absence of an understanding the USOE will assume that all rights reside with the prime contractor or grantee.

Computer Programs: Computer program and similar materials will be subject to copyright authorization in the manner of other educational mate-

rials. The USOE will not permit computer programs and similar materials to be disseminated on a "trade secret" basis. The reason is that materials generated with public funds should not be held in secrecy. (The last statement would not encompass information which is classified for national security purposes.)

Publication Arranged by the USOE: (Sec. 11)
In any case where a contractor/grantee is unwilling or unable to disseminate or have disseminated the materials it has developed, either with or without copyright, the USOE may undertake to arrange for dissemination. It is important, therefore, that the USOE be kept informed of the contractor's/grantee's intentions with regard to dissemination. In that respect the USOE is developing a procedure which is intended to help the contractors/grantees to keep both the USOE and the disseminators informed of their dissemination intentions.

Publication in Scholarly and Professional Journals and Other Periodicals: (Sec. 5)
Publication in journals and periodicals is exempt from the procedural requirements of the USOE Copyright Guidelines. Therefore, no approval from the USOE is required before such publication is arranged, unless the USOE contract or grant specifically provides otherwise. However, such action will still be subject to the irrevocable, nonexclusive, royalty-free license in copyrighted materials which the U.S. Office of Education normally requires by the terms of the grant or contract.

Use of Foreign Printers: The Copyrights statute contains provisions for the protection of the American printing and binding industry. Readers are admonished to obtain legal advice before contracting to have materials printed outside the United States if they intend to claim U.S. Copyright in those materials.

Additional Information: For further information contact the Copyright Administrator, National Center for Educational Communication, U.S. Office of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202.

SEC. 14. *Statement of copyright policy.*

It is the policy of the U.S. Office of Education that the results of activities supported by it should be utilized in the manner which will best serve the public interest. This can be accomplished, in some situations, by distribution of materials without copyright. However, it is recognized that copyright protection may be desirable, in other situations, during development or as an incentive to promote effective dissemination of such materials. In the latter situations, arrangements for copyright of such materials, normally for a limited period of time, may be authorized under appropriate conditions upon a showing satisfactory to the Office of Education that such protection will result in more effective development or dissemination of the materials or would otherwise be in the public interest. (20 U.S.C. 2)

Effective date: These Copyright Guidelines shall take effect 30 days after publication in the FEDERAL REGISTER.

JAMES E. ALLEN, Jr.,
Assistant Secretary for Education and
U.S. Commissioner of Education.

MAY 4, 1970.

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